REMARKS

Claims 1-29 and 36-50 presently appear in this case. No claims have been examined on the merits. Claims 1-29 and 39-50 have been subjected to a restriction and election requirement. The Official Action of December 17, 2008, has now been carefully studied. Prompt consideration on the merits and allowance of all of the claims now present in the case are respectfully urged.

The examiner has required restriction among the following groups of claims:

Group I, including the compounds and compositions according to claims 1-29 and 42.

Group II, including the method of treatment according to claims 36-41.

Group III, including the method of preparation according to claims 43-50.

This restriction requirement is respectfully traversed.

The examiner states that Groups I and II are related as product and process of use and thus must be treated in accordance with MPEP §806.05(h). The examiner states that Groups III and I are related as process of making and product made and thus must be treated in accordance with MPEP §806.05(f). However, these sections of the MPEP apply only to

regular national applications that are not filed as the national phase of a PCT application.

The present application was filed under 35 USC §371 as the national stage of an international application. Thus, any restriction requirement must be based on unity of invention and not U.S. restriction requirement rules (see MPEP §801). Unity of invention in PCT national stage applications is governed by 37 CFR §1.499 (see MPEP §1893.03(d). Note that unity of invention is defined in 37 CFR §1.475(b)(3), where it states:

> National stage applications containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:
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> ***
>
> (3) a product, a process specially adapted for the manufacture of the said product and a use of the said product...

MPEP §1893.03(d) defines "specially adapted" as follows:

> A process is "specially adapted" for the manufacture of a product if the claimed process inherently produces the claimed product with the technical relationship being present between the claimed process and the claimed product. The expression "specially adapted" does not imply that the product could not also be manufactured by a different process.

Here, the examiner states that the three groups are directed to a product, a process for the manufacture of the product, and a process of the use of the product. The only

reason that the examiner gives for requiring restriction between the product and the process of making the product is because the product could allegedly be made by a different process. However, under unity of invention, this does not matter. The same is true for a product and its method of use. It does not matter if the product could be used in another process. 37 CFR §1.475(b)(3), quoted above, does not even use "specially adapted" when referring to a process of use and requires that one use of a product be considered to have unity of invention with the product.

For all of these reasons, unity of invention is maintained among all of the claims presently appearing in this case and all must be examined in accordance with MPEP §1893.03(d) and 1850. Reconsideration and withdrawal of this restriction requirement are therefore respectfully urged.

Nevertheless, in order to be responsive, applicant hereby elects with traverse the compounds and compositions of Group I.

The examiner has also required election of a specifically disclosed species to be examined for search purposes. The examiner states that the claims will be restricted to that species if no generic claim is held to be allowable.

In order to be responsive, applicant hereby elects for further prosecution the species of compound 4 (see Example 1, beginning on page 21 of the present specification, for the chemical name of this compound). The claims encompassing the elected species are 1,2,4,6,7,8,12,14,15,17-29, 36-41, 43 and 44.

The listing of claims hereinabove shows which claims are withdrawn from consideration in light of the elections, some of which are made with traverse. It is expected that the status of whether or not the claims are "withdrawn" will have to be modified when and if the restriction requirement is reformulated under the proper unity of invention standard.

It is submitted that all of the claims now present in the case are directed to a single general inventive concept. Accordingly, reconsideration and withdrawal of the restriction and election requirement and prompt consideration on the merits and allowance of all of the claims now present in the case are earnestly solicited.

Respectfully submitted,

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